No. 95-566

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

STATE OF MONTANA,

Petitioner,

vs.

JAMES ALLEN EGELHOFF,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Montana

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the Due Process Clause prevent a state from reducing intoxication-related crime by holding intoxicated offenders as accountable as their sober counterparts?

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INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The present case involves an unprecedented expansion of defendant's right to present evidence. This will needlessly disrupt the law of evidence and frustrate an important social policy designed to limit crime. This is contrary to the interests CJLF was formed to protect.

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1. Both parties have consented in writing to the filing of this brief.

SUMMARY OF FACTS AND CASE

Defendant was charged with two counts of deliberate homicide. *State* v. *Egelhoff*, 900 P. 2d 260, 261 (Mont. 1995). He claimed he suffered from alcohol-induced amnesia which prevented him from recalling the killings. See *id.*, at 262-263. Pursuant to Montana law, defendant was not allowed to submit evidence that his intoxication prevented him from forming the necessary mental element for deliberate homicide. See *id.*, at 265. The prosecution presented considerable evidence that defendant had the necessary *mens rea*: his unslurred speech, his repeated attempts to avoid detection, his attempted flight, his coordination, and his attempt to drive from the back seat. See *ibid*. A jury convicted defendant on two counts of deliberate homicide. *Id.*, at 263.

The Montana Supreme Court reversed both convictions. It found that under dicta in *Martin* v. *Ohio*, 480 U. S. 228 (1987) defendant had a right to present evidence relevant to raising reasonable doubt about an element of the crime. See *Egelhoff*, 900 P. 2d, at 265-266. Montana's decision to prevent defendant's use of his voluntary intoxication for exculpation violated this mandate. See *id.*, at 266.

SUMMARY OF ARGUMENT

Montana's limit on a defendant's use of voluntary intoxication represents a substantive decision about moral accountability, and its validity should be judged under substantive, not procedural, due process standards. By preventing voluntary intoxication from negating *mens rea*, the people of Montana have determined that voluntarily-intoxicated offenders are as morally culpable as their sober counterparts. This is a matter of substantive criminal law. As the plurality opinion in *Michael H.* v. *Gerald D.*, 491 U. S. 110 (1989) demonstrates, when substantive policies are phrased in evidentiary or procedural terms, such rules should be analyzed under substantive, not procedural, due process. Thus Montana's decision to create an alternative *mens rea* for crimes committed by intoxicated offenders should be analyzed under substantive due process.

Limits on the use of voluntary intoxication embody a strong social policy that satisfies substantive due process. There is a strong correlation between intoxication and crime, particularly violent crime. At least one factor explaining the relationship between intoxication and crime are expectations we derive from our culture. Because we believe that intoxicants make us more aggressive, we tend to act more aggressive when intoxicated.

Limits on the use of voluntary intoxication attempt to break this connection. An important part of the reason why some intoxicated people commit crimes is the belief that intoxication excuses criminal conduct. Withdrawing voluntary intoxication from the defendant's arsenal is an attempt to shatter this myth and reduce intoxication-related crime.

Since there is no fundamental right to have one's intoxication reduce criminal culpability, Montana's statute is accorded deferential review under substantive due process. The importance of the underlying social policy and the close fit between the statute and the goal ensure that Montana's statute satisfies due process.

If procedural due process must be invoked, then *Patterson* v. *New York*, 432 U. S. 197 (1977) provides the proper standard. *Patterson* corrected *Mullaney* v. *Wilbur*, 421 U. S. 684 (1975) by returning the reasonable doubt standard to its relatively undisruptive status first envisioned in *In re Winship*, 397 U. S. 358 (1970). Under *Patterson*, a state criminal rule that is historically valid, does not undermine the prosecution's burden of proving each element of the crime beyond a reasonable doubt, and has not been abused by the states, satisfies the reasonable doubt requirement.

This standard is not undermined by the Montana Supreme Court's interpretation of dicta in *Martin* v. *Ohio*, 480 U. S. 228 (1981). The decision below would entitle defendant to submit to the jury any evidence relevant to reasonable doubt, seriously disrupting the law of evidence. This is unintended by the *Martin* Court. This Court should disavow this extremism and reassert the preeminence of *Patterson*.

Montana's limit on voluntary intoxication satisfies *Patterson*. Banning the use of voluntary intoxication goes back to the common law. While there is some historical support for the

specific intent doctrine, this Court should not enshrine this confusing, illogical doctrine into the Due Process Clause. This limit also satisfies the second part of *Patterson*, as it leaves undisturbed the prosecution's duty to prove each element of the crime.

Nor is the Montana statute abusive. Its historical pedigree indicates that it is not an attempt to circumvent the reasonable doubt requirement. This conclusion is reinforced by the nature of the evidence being excluded. The instances of intoxication negating *mens rea* are either exceedingly rare or nonexistent. It is much more likely that admitting such evidence will confuse the jury by reinforcing myths about intoxication excusing crime. It is no abuse to exclude such highly prejudicial, minimally probative evidence.

Montana's statute also satisfies *Chambers* v. *Mississippi*, 410 U. S. 284 (1973) and *Rock* v. *Arkansas*, 483 U. S. 44 (1987). Chambers was very fact-specific and involved the denial of highly exculpatory evidence. *Rock* dealt with the arbitrary denial of defendant's right to testify on her own behalf. The strong substantive policy supporting Montana's ban on marginally relevant, prejudicial evidence is consistent with these two narrow decisions.

ARGUMENT

I. The Montana statute represents a substantive decision about moral accountability, and its validity should be judged under substantive, not procedural, due process standards.

"We cannot cast aside the centuries-long evolution of the collection of interlocking and overlapping concepts which the common law has utilized to assess the moral accountability of an individual for his antisocial deeds. The doctrines of *actus reus*, *mens rea*, insanity, mistake, justification, and duress have historically provided the tools for a constantly shifting adjustment of the tension between the evolving aims of the criminal law and changing religious, moral, philosophical, and medical views of the nature of man. *This process of adjustment has always been thought to be the province of*

the States." *Powell* v. *Texas*, 392 U. S. 514, 535-536 (1968) (plurality opinion of Marshall, J.) (emphasis added; footnote omitted).

In the present case, the people of Montana, through their Legislature, have made a decision about the moral culpability of persons who commit crimes while voluntarily intoxicated. "Egelhoff was not allowed to rebut such evidence [of *mens rea*] with evidence that his level of intoxication precluded him from forming the requisite mental state." *State* v. *Egelhoff*, 900 P. 2d 260, 265 (Mont. 1995). He was precluded because the people of Montana decided as a matter of *substantive* law that the fact he sought to prove does not make him any less blameworthy, does not negate guilt, and therefore is irrelevant.

The state court in the present case did not address whether the statute was procedural or substantive, and in any event the label attached by state law would not be determinative. See *Hicks* v. *Feiock*, 485 U. S. 624, 631 (1988); *id.*, at 646 (O'Connor, J., dissenting).[2]

The effect of intoxication on moral blameworthiness has a long and winding history, as is further described in part II, *post*, at 8-13. The people of Montana certainly possess the sovereign power to decide that a person who kills after drinking himself into such a state that he can neither know nor have purpose[3] is just as blameworthy and just as guilty as one who kills "purposely" or "knowingly." If that is what they did, then *In re Winship*, 397 U. S. 358 (1970) and its progeny are inapposite.

Legislatures sometimes phrase substantive rules in procedural or evidentiary terms. *Michael H.* v. *Gerald D.*, 491 U. S. 110

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2. In *Hicks*, like the present case, the government sought review from a state appellate decision in favor of the defendant. This Court vacated and remanded "for further consideration of [the statute] free from the compulsion of an erroneous view of federal law." *Id.*, at 640-641. If the superficiality of the state opinion in the present case prevents this Court from finally determining the case, the same course might be in order here.

3. There is considerable debate as to whether such a mental state is even possible in a person sufficiently conscious to commit the *actus reus*. See *post*, at 24-26.

(1989) is the best example. Former California Code of Civil Procedure section 621 provided that, with certain exceptions, "the issue of a wife cohabiting with her husband . . . is conclusively presumed to be a child of the marriage." *Id.*, at 117; see also Cal. Family Code § 7540 (same rule in new code).

The plurality disposed of the procedural due process claim in a page and a half. "While § 621 is phrased in terms of a presumption, that rule of evidence is the implementation of a substantive rule of law." 491 U. S., at 119. The state had decided, as a matter of policy, that in this situation the legal rights and duties of fatherhood should be vested in the husband, regardless of who was the genetic father of the child. "In this respect there is no difference between a rule which says that the marital husband shall be irrebuttably presumed to be the father, and a rule which says that the adulterous natural father shall not be recognized as the legal father." *Id.*, at 120.

The analogy to the present situation is exact. There is no difference between a rule which says that intoxication will not be considered to negate purposefulness and a rule which says that intoxicating oneself to the point of negating purposefulness is an alternate *mens rea* for committing the crime. This is not a case where the jury was instructed to ignore the exculpatory evidence in deciding whether the defendant was guilty of murder. Cf. *Gilmore* v. *Taylor*, 124 L. Ed. 2d 306, 318-319, 113 S. Ct. 2112, 2118 (1992). This is a case where the Legislature has made a moral judgment that the evidence is not exculpatory.

The California Supreme Court confronted a similar procedural/substantive distinction in *People* v. *Bransford*, 884 P. 2d 70 (1994). California Vehicle Code section 23152(b) prohibits driving with a blood alcohol concentration above 0.08 percent. To deal with the situation of drivers who take a breath test and not a blood test, the statute goes on to state that blood alcohol "shall be based upon" a fixed ratio of blood alcohol to breath alcohol. Defendants were not permitted to show that their personal "partition ratios" were different from the ratio stated in the statute. *Id.*, at 74. The Court rejected the constitutional challenge after finding that the statute changed the substantive definition of the crime. *Id.*, at 73-74.

A single crime which can be committed in different ways is not unusual in the criminal law. During the nineteenth century, a person charged with one of the crimes of larceny, embezzlement, or false pretenses could sometimes win an acquittal by arguing he was actually guilty of one of the others. See 2 W. LaFave & A. Scott, Substantive Criminal Law § 8.8, p. 409 (1986). This made no sense, because the distinctions between the crimes were often subtle or dependent on facts known only to the defendant, and the crimes are equally blameworthy. *Id.*, at 409-412.

The answer to this problem was to consolidate the three crimes. *Id.*, at 414-415. In *People* v. *Nor Woods*, 233 P. 2d 897 (Cal. 1951), the defendant was charged under such a statute with fraud in the sale of a car. The jury did not need to agree whether the victim merely transferred possession, making the defendant guilty of larceny by trick, or actually passed title, making the crime false pretenses. It is sufficient that they agreed he is guilty of one or the other, without precisely marking the blurred and morally irrelevant boundary between them. *Id.*, at 89[illegible]; see also *Schad* v. *Arizona*, 501 U. S. 624, 630 (1991) (jury need not agree on felony murder versus premeditated murder).

In *Nor Woods*, consolidation of the theft crimes effectively withdrew the question of title from the jury. The case is no different than if they were instructed that title "shall not be considered," as the Montana statute does with intoxication. A general verdict under such a statute is permissible. There is no general constitutional requirement of separate verdicts on each possible mode of committing a crime. See *Schad*, 501 U. S., at 631 (plurality). The only limit is whether offenses have been joined which are so disparate as to violate the vagueness doctrine, *id.*, at 632-633, a standard this statute easily passes.

Thus, the practical effect which the Montana Legislature sought to achieve is one within its power to enact. The principal question is whether the words chosen by the Legislature operate to invalidate the means, even though the end is permissible.

Regrettably, this Court's cases on form versus substance have not been entirely consistent. *Hicks* v. *Feiock*, *supra*, 485 U. S., at 631, noted that "labels affixed" were not controlling and proceeded to examine "the substance of the pro-

ceeding . . . ." However, *Carella* v. *California*, 491 U. S. 263, 263-265, 267 (1989), decided the same day as *Michael H.*, *supra*, struck down a mandatory presumption regarding theft of rental cars without pausing to consider whether the Legislature had actually created a new variant of theft through inartful language.

Just as the important protections of the Due Process Clause cannot be deprived merely by the label attached to a proceeding, see *Hicks* v. *Feiock*, 485 U. S., at 631; *In re Gault*, 387 U. S. 1, 30-31 (1967), neither should the awesome power of judicial review of statutes be invoked merely because a legislature failed to express its permissible objective in precisely the right words. The Montana Legislature has decided that Egelhoff's conduct is equally culpable whether his claim to have been too intoxicated to form the otherwise required mental state is true or not. That decision is within its authority to make.

II. Limits on defendant's use of voluntary intoxication embody a strong social policy that satisfies substantive due process.

Substantive due process is necessarily narrow. The Due Process Clause "has at times been a treacherous field for this Court" which gives "reason for concern lest the only limits . . . to judicial intervention become the predilections of those who happen at the time to be the members of this Court." *Moore* v. *East Cleveland*, 431 U. S. 494, 502 (1977). Unless the legislation impinges upon a fundamental right, substantive due process review of legislation is very deferential. Substantive due process review of social and economic legislation gives great deference to legislatures. See, *e.g.*, *City of New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1976); 2 R. Rotunda & J. Nowak, Treatise on Constitutional Law § 15.4, p. 407 (2d ed. 1992). The policy supporting limits on the use of voluntary intoxication will demonstrate that such statutes are entitled to and will satisfy this deferential standard.

There is a close, disturbing, and incompletely defined relationship between intoxication and crime. Many studies have noted that a disproportionally large number of crimes, particularly violent crimes, are committed by intoxicated offenders. See, *e.g.*, Murdoch, Pihl, & Ross, Alcohol and Crimes of Violence: Present Issues, 25 Int'l J. of the Addictions 1065, 1066-1067 (1990); Fagan, Intoxication and Aggression, in Drugs and Crime 241-243 (M. Tonry and J. Wilson ed. 1990) ("Fagan"); Spunt, *et al.*, Alcohol and Homicide: Interviews with Prison Inmates, 24 J. of Drug Issues 143, 143-144 (1994). It was once thought that this close association was brought about by the fact that the chemical effect of intoxicants was to make people uninhibited. See Critchlow, The Powers of John Barleycorn, 41 American Psychologist 751, 753 (July 1986). This belief helped create and sustain the notion that crimes committed under voluntary intoxication could somehow be less culpable. Thus, intoxication has been permitted to negate *mens rea* in at least specific intent crimes. See Mitchell, The Intoxicated Offender—Refuting the Legal and Medical Myths, 11 Int'l J. Law and Psych. 77, 78-83 (1988).[4] This stood in marked contrast to the common law view, which held that voluntary intoxication aggravated criminal conduct. See 4 W. Blackstone, Commentaries 25-26 (1st ed. 1769).

The belief that intoxicants are related to crime solely because they act as chemical disinhibitors is deeply ingrained in American culture. See Critchlow, *supra*, 41 American Psychologist, at 753-754; Mitchell, *supra*, 11 Int'l J. Law and Psych., at 82-83; Murdoch, *supra*, 25 Int'l J. of the Addictions, at 1066. It has also come under strong attack. It is very difficult to study the biological effect of intoxicants on human behavior, because we still have little understanding of how intoxication causes drunkenness and most of the research is conducted on mildly intoxicated university students under only mildly stressful

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4. Much of the research on the effects of intoxication and crime deals with alcohol. While many other substances intoxicate, see Special Project, Drugs and Criminal Responsibility, 33 Vand. L. Rev. 1145, 1145-1171 (1980), researchers often do not distinguish between various intoxicants. See, *e.g.*, Fagan, *supra*, at 241-243 (listing research on both drugs and alcohol then noting the link between "intoxication and aggression"). Given the deference courts give to the wisdom of substantive legislative decisions, see *Dukes*, *supra*, 427 U. S., at 303, there is no need to make distinctions finer than those made by the experts. Therefore, research on alcohol and drugs can be used interchangeably.

situations. *Fagan*, *supra*, at 248-249. Under controlled studies, people who were given a placebo and told it was alcohol acted as aggressively as those who were given alcohol and knew they were consuming it, contradicting the notion that intoxication has some inevitably biochemical link to aggressive behavior. See Collins, Suggested Explanatory Frameworks to Clarify the Alcohol Use/Violence Relationship, 15 Contemp. Drug Prob. 107, 115 (1988); see also Critchlow, *supra*, 41 American Psychologist, at 754-755 (placebo studies demonstrate expectations determine intoxicated behavior).

Culturally based expectations can provide a useful tool in explaining intoxication-related crime. Society's views on the effects of intoxication can have a real effect on the aggressiveness of the intoxicated. Thus one researcher found that while two Central Mexican Indian tribes engaged in heavy drinking, drinking was only associated with violence in one tribe. These differences were attributed "to the cultural norms that govern drinking behavior, *including the accountability under tribal rules of individuals for their behavior after drinking*." U. S. Dept. of Justice, National Institute of Justice, Alcohol Use and Criminal Behavior 14-15 (1981) ("NIJ") (emphasis added).

This conclusion is consistent with the placebo studies. People became more aggressive after drinking the placebo because society instructed them that alcohol made them more disinhibited and therefore more aggressive. See Collins, *supra*, 15 Contemp. Drug Prob., at 115. Similarly, many researchers now believe that cultural norms about induced intoxication are the primary influence on the behavior produced by intoxicants. See Mitchell, *supra*, 11 Int'l J. of Law & Psychiatry, at 86-87; NIJ, *supra*, at 14-15; Critchlow, *supra*, 41 American Psychologist, at 760-761.

It is unlikely that we will ever define the relationship between intoxication and crime with complete precision. Thus there is still some support for the adherents of a primarily pharmacological explanation for intoxication-related aggression. See Chermack and Taylor, Alcohol and Human Physical Aggression: Pharmacological Versus Expectancy Effects, 56 J. Stud. Alcohol 449 (1995). The best explanation is found from a synthesis of the two views. Thus pharmacology and expectations can both play a role in explaining intoxication-related

crime. See Lang, Alcohol-Related Violence: Psychological Perspectives, in Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives 136 (S. Martin ed. 1993).

The Due Process Clause does not require Montana to choose between these two explanations. "As federal judges, we have no authority to pass judgment on the wisdom of the underlying policy determination." *Martinez* v. *California*, 444 U. S. 277, 283 (1980). "But the state legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of public welfare . . . ." *Day-Brite Lighting* v. *Missouri*, 342 U. S. 421, 423 (1952). Judicial deference extends to the states' legislative prerogative in the criminal law. See *Patterson* v. *New York*, 432 U. S. 197, 201 (1977). Montana should be allowed to attack the expectation-based causes of intoxicated crime without judicial interference.

An important factor behind the relationship between expectations, intoxication, and crime is the use of intoxication by criminals as an excuse for their behavior. It is well known that criminals attempt to excuse their behavior to society and to themselves by blaming their intoxication. See Collins, *supra*, 15 Contemp. Drug Prob., at 116; see also Spunt, *supra*, 24 J. of Drug Issues, at 149-150; Critchlow, *supra*, 41 American Psychologist, at 754; Fagan, *supra*, at 295-296 (placebo studies showing how expectations influence intoxicated behavior). Rapists and child molesters may even preplan their "extenuating" circumstances. McCord, Considerations of Causes in Alcohol-Related Violence, in Alcohol and Interpersonal Violence, *supra*, at 72. By removing blame for crime from the intoxicated offender, cultural attitudes can make intoxication more likely to lead to crime.

> "On a cultural level, it seems to be the negative consequences of alcohol that hold the most powerful sway over our thinking. Because alcohol is seen as a cause of negative behavior, alcohol-related norm violations are explained with reference to drinking rather than the individual. Thus, by believing that alcohol makes people act badly, we give it a great deal of power. *Drinking becomes a tool that legitimates irrationality and excuses violence without permanently destroying an individual's moral standing or the society's system of rules and ethics*. This power consists in our own

beliefs, and changing these beliefs is no easy task: They are strongly entrenched, enduring legacies from the temperance movement." Critchlow, *supra*, 41 American Psychologist, at 761-762 (citation omitted; emphasis added).

To the extent that expectations cause intoxication-related crime, then society should eliminate the intoxicated offender's excuses. "The plausibility of the disavowal framework depends on the acceptance of these accounts of behavior by society. Such accounts help avoid the assignment of an identity to an individual consistent with their deviant behavior." Fagan, *supra*, at 296 (citation omitted). Such excuses are not immutable. Society has changed its attitude towards intoxication from time to time. See Critchlow, *supra*, 41 American Psychologist, at 762.

Limits on the use of voluntary intoxication are a key component in breaking the link between intoxication, expectations, and crime. Criminal law plays an important role in educating us about proper and improper conduct. See Scheidegger, Capital Punishment in 1987: The Puzzle Nears Completion, 15 West. St. L. Rev. 95, 96 (1987); 1 W. LaFave & A. Scott, Substantive Criminal Law § 1.5(5), pp. 34-35 (1986). Limits on the use of voluntary intoxication can thus educate people that intoxicated crime is no longer accepted by society. Criminal law also expresses society's moral outrage at misconduct. See *Gregg* v. *Georgia*, 428 U. S. 153, 183 (1976) (lead opinion). Montana Code Annotated § 45-2-203 and similar statutes express society's moral outrage at intoxicated crimes. "Numerous trial decisions . . . demonstrate that intoxication permits offenders to shift some or all of the blame to their drugged state. Such decisions contribute to a general cultural climate *allowing intoxicated misbehavers to excuse themselves*." Mitchell, *supra*, 11 Int'l J. Law and Psych., at 87-88 (emphasis added). The decision below is another precedent in this line of cases.

There is no fundamental right to have one's voluntary intoxication reduce one's criminality. Section 45-2-203, by changing the *mens rea* of crimes, see Part I, *ante*, at 4-8, in order to reduce intoxication-related crime, infringes upon no other interest of defendants. Fundamental fairness, whatever it may be, is made of sterner stuff than this. History, an important determinant in any due process analysis, see, *e.g.*, *Jackman* v. *Rosenbaum Co.*, 260 U. S. 22, 31 (1922) (Holmes, J.); *Michael H.* v. *Gerald D.*, 491 U. S. 110, 122 (1989), is on the side of limiting the legal effect of intoxication. See 4 Blackstone, *supra*, at 26. This makes rational basis the appropriate level of scrutiny for limits on the use of voluntary intoxication.

Section 45-2-203 readily satisfies this test. Since it is an effort to prevent crime, it advances one of society's most important interests. See *Procunier* v. *Martinez*, 416 U. S. 396, 411 (1974), overruled on other grounds, *Thornburg* v. *Abbott*, 490 U. S. 401, 413-414 (1989). The substantial research on culture and crime and the criminal law's function as an influence on our culture make the relationship between section 45-2-203 and crime reduction more than rational. Since it is at the very least rationally related to a legitimate state interest, section 45-2-203 passes muster under substantive due process.

III. The Montana Supreme Court's interpretation of the *Martin* dicta does not govern the present case.

Even if the substantive due process arguments found in parts I and II are not dispositive, the Montana Supreme Court's decision still cannot stand. Its extreme interpretation of dicta in *Martin* v. *Ohio*, 480 U. S. 228 (1987) should be rejected.

"Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, K. & T. R. Co.* v. *May*, 194 U. S. 267, 270 (1904). This principle applies with undiminished force to the constitutional protections of criminal defendants. "[G]eneral rules of law of this kind, however beneficent in their operation and valuable to the accused, must occasionally give way to considerations of public policy and the necessities of the case." *Mattox* v. *United States*, 156 U. S. 237, 243 (1895).

Patterson v. *New York*, 432 U. S. 197 (1977) contains the most illuminating analysis of the reasonable doubt requirement. It sticks closest to the uncontroversial nature of this requirement

as stated in *In re Winship*, 397 U. S. 35 (1970) and therefore should govern the present case.

A. Winship.

The difficulties with the reasonable doubt standard do not stem from *In re Winship*, 397 U. S. 358 (1970). For the most part, *Winship* simply stated the obvious. Reasonable doubt was almost universally accepted in this country as the standard of proof for criminal cases. See *id.*, at 361; 9 J. Wigmore, Evidence § 2497, pp. 405-406 (Chadbourn rev. 1981). In addition to noting this point, the *Winship* Court also explained why the reasonable doubt standard was important. Since a criminal defendant has much more at stake in the trial than the prosecution, common sense makes the state bear the risk of erroneous verdicts. See 397 U. S., at 363. Like the reasonable doubt standard itself, this rationale for the standard is similarly uncontroversial, dating back to the common law. See 4 W. Blackstone, Commentaries 352 (1st ed. 1769).[5] The *Winship* Court concluded its justification of applying reasonable doubt to the states by noting the entirely logical point that this standard helps "command the respect of the community in applications of the criminal law." 397 U. S., at 364. By taking all reasonable efforts to ensure that only the guilty are convicted, the criminal law retains its "moral force." See *ibid.*

The only controversy in *Winship* was not with the reasonable doubt standard itself, but with whether it applied to juvenile delinquency proceedings. When *Winship* was decided, many jurisdictions did not use the reasonable doubt standard in juvenile proceedings. See *id.*, at 360, n. 3. This part of *Winship* is irrelevant to the present case, except as an example of how uncontroversial *Winship* appeared to be for the criminal law. Because the reasonable doubt standard was so well established in the criminal law, the question of whether it was constitutionally required had not arisen in a criminal case. Only the use of a different standard in juvenile cases brought the question up.

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5. "[F]or the law holds, that it is better that ten guilty persons escape, than that one innocent suffer."

This history would seem to indicate that *Winship* would leave the criminal law undisturbed.

B. Mullaney.

The expectation that *Winship* would not disrupt the criminal law was seemingly upset by *Mullaney* v. *Wilbur*, 421 U. S. 684 (1975). *Mullaney* held that this common law presumption of malice, where an intentional, unjustified, unexcused homicide was presumed to be murder unless defendant showed adequate provocation, see *id.*, at 693-694, violated *Winship*. Maine attempted to avoid *Winship* by noting that under Maine law, the absence of provocation was not necessary to constitute the crime of murder. See *id.*, at 696-697. This Court refused to accept this contention, finding that the consequences of mitigating murder to manslaughter were so great that they warranted protection under *Winship*. See *id.*, at 697-698.

The *Mullaney* Court appeared to be driven by a fear that states could circumvent the reasonable doubt standard by manipulating the structure of their criminal law. "Thus if petitioners' argument were accepted, Maine could impose a life sentence for any felonious homicide—even one that traditionally might be considered involuntary manslaughter—unless the *defendant* was able to prove that his act was neither intentional nor criminally reckless." *Id.*, at 699 (emphasis in original).

The problem with this fear is that it is essentially unfounded, and almost impossible to allay. *Winship* demonstrated that the states had long accepted the reasonable doubt standard. This concern that the same states which helped advance the reasonable doubt standard to a pillar of fundamental fairness would now attempt to avoid it by perverting their criminal law is unseemly.

More importantly, a concerted effort by a state to avoid the result of *Mullaney* would be very difficult to stop. Maine simply could have abolished the crime of heat of passion manslaughter. Unless this Court took the extraordinary step of creating a constitutional right to the traditional degrees of homicide, such a statutory scheme would satisfy both *Mullaney* and *Winship*. This attempt to close every loophole, no matter how remote, betrays an inappropriate mistrust of state legislatures. The

Mullaney Court seemed to presume that the states would act in bad faith.

C. Patterson.

Patterson v. *New York*, 432 U. S. 197 (1977) corrected *Mullaney*. The *Patterson* Court allowed New York to place the burden of proving the affirmative defense of extreme emotional disturbance on the defendant. By showing a much greater willingness to trust the states, the *Patterson* Court backed away from much of *Mullaney*.

> "It goes without saying that preventing and dealing with crime is much more the business of the States than it is of the Federal Government, *Irvine* v. *California*, 347 U. S. 128, 134 (1954) (plurality opinion), and that we should not lightly construe the Constitution so as to intrude upon the administration of justice by the individual States. Among other things, it is normally 'within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion,' and its decision in this regard is not subject to proscription under the Due Process Clause unless 'it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' " *Id.*, at 201-202 (quoting *Speiser* v. *Randall*, 357 U. S. 513, 523 (1958)).

As in *Mullaney*, *Patterson* involved a finding that reduced murder to manslaughter. See *id.*, at 198-199; *Mullaney* v. *Wilbur*, 421 U. S. 684, 693-694 (1975). This similarity was immaterial to the *Patterson* Court. Language in *Mullaney* that could be read to "require the prosecution to prove beyond reasonable doubt any fact affecting 'the degree of criminal culpability,' " *Patterson*, 432 U. S., at 214, n. 15, led down a slippery slope. Taken to its logical conclusion, such language could penalize legislatures for mitigating crimes unless they placed the burden of disproving the mitigation on the prosecution. See *id.*, at 215, n. 15. "The Court did not intend *Mullaney* to have such far-reaching effect." *Ibid.*

Mullaney had to be limited. It "surely held that a State must prove every ingredient of an offense beyond a reasonable doubt,

and it may not shift the burden of proof to the defendant by presuming that ingredient upon proof of the other elements of the offense . . . .¶ It was unnecessary to go further in *Mullaney*." *Id.*, at 215; accord *McMillan* v. *Pennsylvania*, 477 U. S. 79, 85 (1986).

What is most illuminating about *Patterson* is how it dealt with concerns about legislative abuse. It recognized that its decision not to require the state to disprove all affirmative defenses beyond a reasonable doubt "may seem to permit state legislatures to reallocate burdens of proof by labelling as affirmative defenses at least some elements of the crimes now defined in their statutes." 432 U. S., at 210. How it dealt with this fear is what makes *Patterson* the most important of the reasonable doubt cases.

The *Patterson* Court recognized that any fear of state abuse of affirmative defenses was largely unfounded. History demonstrated that the states had not abused their privilege to place the burden of proving affirmative defenses on defendant. *Id.*, at 211. This conclusion is also consistent with common sense. Few government activities are as important as the law of crimes. It provides the means of deterring antisocial conduct, and of expressing society's condemnation of such destructive behavior. See *People* v. *Roberts*, 826 P. 2d 274, 298 (Cal. 1992). The law of crimes develops through an evolutionary process that is the traditional function of the states. See *Powell* v. *Texas*, 392 U. S. 514, 536 (1968) (plurality).

Therefore, instead of creating some far-reaching rule to deal with hypothetical threats, *Patterson* simply upheld New York's historically valid procedure because "nothing was presumed or implied against Patterson; and his conviction is not invalid under any of our prior cases." 432 U. S., at 216.

D. Martin.

Martin v. *Ohio*, 480 U. S. 228 (1987) was a relatively straightforward application of *Patterson*. As in *Patterson*, the crucial element of history was on the state's side; historically, defendants had the burden of proving self-defense. See *id.*, at 235; *Patterson*, *supra*, 432 U. S., at 202. This, along with the fact that under Ohio law the prosecution still had to prove each

element of the crime beyond a reasonable doubt, was dispositive. The fact that only one other state followed this practice was irrelevant; *Patterson* required no more than what Ohio provided. See *Martin*, *supra*, 480 U. S., at 236.

The problem with *Martin* is that the language of the opinion goes beyond the facts of the case. The *Martin* Court chose to deal with the hypothetical concern of a state preventing self-defense evidence from being admitted not as a defense, but as a means of creating reasonable doubt.

> "It would be quite different if the jury had been instructed that self-defense evidence could not be considered in determining whether there was a reasonable doubt about the State's case, *i.e.*, that self-defense evidence must be put aside for all purposes unless it satisfied the preponderance standard. Such instruction would relieve the State of its burden and plainly run afoul of *Winship*'s mandate." *Id.*, at 233-234.

This passage was unnecessary to the disposition of the case, because the Ohio statute did not effect the admissibility of self-defense evidence. Therefore, this passage is no more than dicta. See *St. Louis, V. & T. H. R. Co.* v. *Terre Haute & I. R. Co.*, 145 U. S. 393, 403 (1892). As dicta, this passage is not binding on this Court as *stare decisis*. See, *e.g.*, *Kokkonen* v. *Guardian Life Ins. Co. of America*, 128 L. Ed. 2d 391, 396, 114 S. Ct. 1673, 1676 (1994). This fact was understood by the Montana Supreme Court, which decided to follow this dicta even though it was not bound by it. See *State* v. *Egelhoff*, 900 P. 2d 260, 265-266 (1995).

As the present case demonstrates, the passage from *Martin* is not simply "mere dicta." It is also dangerous dicta. Montana's high court has taken the *Martin* dicta to its logical extreme. It transformed *Winship*'s guarantee that the prosecution must prove each element beyond a reasonable doubt into a general rule of evidence requiring the admission of *all* evidence relevant to raising reasonable doubt. See *id.*, at 266. This is a breathtaking assertion. Allowing defendants to submit *any* evidence to the jury that is relevant to reasonable doubt would decimate the law of evidence. Many rules of evidence exclude otherwise relevant evidence. See, *e.g.*, Fed. Rules Evid. 403

(undue prejudice); Rule 412 (rape victim's past sexual behavior); Rules 801-802 (hearsay). "Fundamental fairness" is neither this intrusive to the states, nor unfair to the prosecution.

This Court has wisely chosen to avoid constitutionalizing the rules of evidence. Thus, the Confrontation Clause, U. S. Const., Amdt. 6, is not a constitutional rule against all hearsay adverse to a defendant. See *Ohio* v. *Roberts*, 448 U. S. 56, 62-63 (1980). This Court rejected such an interpretation of the Confrontation Clause as too disruptive and contrary to the historical meaning of the Clause. See *id.*, at 63.

The *Martin* dicta does not require the conclusion reached by the Montana Supreme Court. *Martin* assumed that the self-defense evidence in Martin's case was already admissible. "The instructions in this case could be clearer in this respect, but when read as a whole, we think they are adequate to convey to the jury that *all of the evidence*, including the evidence going to self-defense, must be considered in deciding whether there was reasonable doubt about the sufficiency of the State's proof of the elements of the crime." *Martin*, *supra*, 480 U. S. 234 (emphasis added).

Just like the interpretation of the Confrontation Clause rejected by *Roberts*, the Montana Supreme Court's transformation of *Winship* from a guarantee of reasonable doubt should be rejected as extreme and ahistorical. As noted above, transforming *Winship* into a guarantee of admissibility would inevitably be immensely disruptive to the law of evidence. It would also be ahistorical. The common law rejected any notion that voluntary intoxication could reduce criminality, finding it to aggravate culpability. See 4 W. Blackstone, Commentaries 25-26 (1st ed. 1769). Voluntary intoxication was not allowed to reduce criminal responsibility until well into the nineteenth century, and then only for specific intent crimes. See *Hopt* v. *People*, 104 U. S. 631, 633 (1882); *Tucker* v. *United States*, 151 U. S. 164, 170 (1894) (voluntary intoxication cannot reduce wanton killings to voluntary manslaughter); *People* v. *Hood*, 462 P. 2d 370, 377 (Cal. 1969).

Limiting the lower court's extreme interpretation of *Martin* would parallel *Patterson*'s disapproval of similar uses of *Mullaney*. See 432 U. S., at 214, n. 15. The *Martin* Court was

only concerned about the possibility of applying the preponderance standard to already admissible evidence. The dictum should be limited to this concern and explicitly noted as having no precedential weight. Neither *Martin* nor the present case involves placing such a burden on admissible evidence. In *Martin*, the evidence was freely admissible, see 480 U. S., at 234, while in the present case evidence of intoxication is rendered irrelevant by the Montana statute's effective change of the *mens rea* for crimes. See Part I, *ante*, at 4-8. This is not the place to give the *Martin* dicta precedential effect. "This seems to us a topsy-turvy version of judicial restraint. It was, if anything, those dicta themselves—uninvited, unargued and unnecessary to the Court's holdings—which insulted that virtue; and we would add injury to insult by according them precedential effect." *Nursing Home Pension Fund* v. *Demisay*, 124 L. Ed. 2d 522, 533, n. 5, 113 S. Ct. 2252, 2259, n. 5 (1993).

Patterson provides the proper analytical framework. If a practice has historical support, does not diminish the standard of proof for the elements of a crime, and has not been abused by the states, then the practice satisfies due process. See *Patterson*, *supra*, 432 U. S., at 210, 215; *Martin*, *supra*, 480 U. S., at 233, 235; see also *Medina* v. *California*, 505 U. S. 437, 445 (1992) (adopting *Patterson* for procedural due process challenges to state criminal rules); *id.*, at 446 ("Based on our review of the historical treatment of the burden of proof in competency proceedings, the operation of the challenged rule, and our precedents" the rule in question does not violate *Patterson*). As Part IV will demonstrate, limits to the use of voluntary intoxication readily satisfy *Patterson*.

IV. Limits on defendant's use of voluntary intoxication satisfy *Patterson*.

Patterson v. *New York*, 432 U. S. 197 (1977), the appropriate mode of analyzing state laws under *In re Winship*, 397 U. S. 358 (1970), see Part III C, *ante*, at 16-17, looks to three factors in determining whether a state rule satisfies the Due Process Clause. A rule that was historically accepted, does not diminish the burden of proof on any element of the relevant crime, and has not been subject to abuse will satisfy due process. See *ante*,

at 20.[6] Limits on the use of voluntary intoxication satisfy all three of these conditions.

A. History.

As noted earlier, historically, the law has limited defendant's use of his own intoxication for exculpation. See *ante*, at 9. The only difficulty presented by the history of voluntary intoxication under the law is the development of the specific intent doctrine. Under the common law, voluntary intoxication was of no use to the defendant. It was either ignored or treated as aggravating culpability. See 4 W. Blackstone, Commentaries 25-26 (1st ed. 1769); Hall, Intoxication and Criminal Responsibility, 57 Harv. L. Rev. 1045, 1046-1047 (1944); Singh, History of the Defence of Drunkenness in English Criminal Law, 49 L. Q. Rev. 528, 530-535 (1933). During the course of the nineteenth century this view changed, as courts on both sides of the Atlantic developed a distinction between specific and general intent crimes. See, *e.g.*, *Hopt* v. *People*, 104 U. S. 631, 633 (1882); *Hall*, *supra*, 57 Harv. L. Rev., at 1048-1050; *People* v. *Hood*, 462 P. 2d 370, 377 (1969). This doctrine was meant to deal with the problem of the intoxicated offender by allowing voluntary intoxication to negate the mental element of so-called "specific intent" crimes. *Hood*, *supra*, 462 P. 2d, at 377-378. Specific intent remains the majority view in those many jurisdictions which choose to limit voluntary intoxication. See 2 C. Torcia, Wharton's Criminal Law § 111, pp. 81-115 (15th ed. 1994).

The Montana statute in the present case does not follow the specific intent doctrine, instead forbidding defendant's use of his own voluntary intoxication with respect to all crimes. See Mont. Code Ann. § 45-2-203. Since at least some of the roots of the specific intent doctrine set in before the adoption of the Four-

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6. This does not mean that these are the only rules that will satisfy *Winship*. Laws without historical pedigrees must also be allowed to withstand constitutional muster or the states may lose their role as the national laboratories. Cf. *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting). Thus, a new procedure can satisfy due process if there is not a historical basis for deeming it fundamentally unfair. See *Medina* v. *California*, 505 U. S. 437, 446 (1992).

teenth Amendment, see, *e.g.*, Hall, *supra*, 57 Harv. L. Rev., at 1049; *People* v. *Belencia*, 21 Cal. 544, 546-547 (1863), it may be argued that only those limits on voluntary intoxication that follow the specific intent doctrine are historically valid.

This argument is dangerous, and should be rejected. The specific intent doctrine has come under a ceaseless barrage of criticism as illogical and unworkable. See, *e.g.*, Morse, Undiminished Confusion in Diminished Capacity, 75 J. Crim. L. & Criminology 1, 4, n. 12 (1984); G. Williams, Criminal Law—The General Part § 21, p. 49 (2d ed. 1961); J. Hall, General Principles of Criminal Law 142 (2d ed. 1960); 1 W. LaFave & A. Scott, Substantive Criminal Law § 4.10, p. 554 (1986).

> "Too often the characterization of a particular crime as one of specific or general intent is determined solely by the presence or absence of words describing psychological phenomena—'intent' or 'malice,' for example—in the statutory language defining the crime. When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence, we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general criminal intent. When the definition refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent. *There is no real difference, however, only a linguistic one*, between an intent to do an act already performed and an intent to do that same act in the future." *Hood*, *supra*, 462 P. 2d, at 377-378 (emphasis added).

The Due Process Clause cannot rest on such an ephemeral distinction. A constitutional specific intent doctrine would require the courts to make a case-by-case analysis of individual criminal statutes under this abstruse doctrine. "Liberty finds no refuge in a jurisprudence of doubt." *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 120 L. Ed. 2d 674, 693, 112 S. Ct. 2791, 2803 (1992) (lead opinion). There is no reason to subject this Court or the state courts to such a frustratingly inexact doctrine. Therefore, this Court should accept the common law's total rejection of voluntary intoxication as an historically accepted practice. Since section 45-2-203 follows

the common law view of voluntary intoxication, it satisfies *Patterson*'s historical requirement.

B. Reasonable Doubt.

The second requirement of *Patterson* v. *New York*, 432 U. S. 197 (1977), that the relevant rule does not lessen the prosecution's burden of proving beyond a reasonable doubt each element of the crime, is taken from *In re Winship*, 397 U. S. 358 (1970). See 432 U. S., at 206. This is not the general right to submit relevant evidence that the Montana Supreme Court created out of the *Martin* v. *Ohio*, 480 U. S. 228 (1987) dicta. See *ante*, at 18-19. *Patterson* simply requires that the jury be instructed that the prosecution must prove beyond a reasonable doubt each element of the crime, see 432 U. S., at 206, and no presumption or implication can relieve the People of its burden. See *id.*, at 216. Thus the state legislature's definition of the elements of the crime is usually dispositive under *Patterson*. *McMillan* v. *Pennsylvania*, 477 U. S. 79, 85 (1986).

Limits on voluntary intoxication satisfy both aspects of *Patterson*. Montana Code Annotated § 45-2-203 did not prevent the jury from being instructed on the People's burden of proof for each element. See *State* v. *Egelhoff*, 900 P. 2d 260, 264 (Mont. 1995). There are many rules that prevent a criminal defendant from submitting relevant evidence to the jury. See *ante*, at 18-19. Preventing the admission of voluntary intoxication to negate *mens rea* "merely prohibits the jury from considering self-induced intoxication to negate the defendant's state of mind. Appellant could still have attempted to convince the jury he did not [have the required mental state]. Moreover, the statute [preventing the use of voluntary intoxication] does not relieve the State of the burden of establishing that a defendant had the requisite mens rea." *State* v. *Souza*, 813 P. 2d 1384, 1386 (Haw. 1991).

Nor do such laws create any impermissible presumptions. *Patterson* is concerned with presumptions that shift the state's burden of proof by presuming the existence of an element of the crime after the state proves the existence of the other elements. 432 U. S., at 215. Limits on the use of intoxication are simply irrelevant to this inquiry. The fact that defendant cannot submit some evidence simply does not presume the existence of an

element of a crime. This common sense conclusion is all that is required to satisfy *Patterson*'s second hurdle.

C. Abuse.

The concern in *Patterson* v. *New York*, 432 U. S. 197, 210 (1977) about abusive state efforts to circumvent the reasonable doubt requirement is satisfied in two ways. First, as in *Patterson*, there is no history of state abuse of limits on the use of voluntary intoxication. See *id.*, at 211.

The age of the rule helps demonstrate that it has not been abused. The limits on voluntary intoxication have been in effect in common law jurisdictions since the sixteenth century. See Singh, History of the Defence of Drunkenness in English Criminal Law, 49 L. Q. Rev. 528, 530 (1933). Its 400-year pedigree and widespread use, see *ante*, at 21, are strong evidence that this policy is not abusive.

The strong policy considerations behind limits on voluntary intoxication further show that it is not abusive. Such policies do not simply hamper defendants; they are meant to achieve the essential task of severing the link between intoxication and crime by eliminating our culture's acceptance of voluntary intoxication as an excuse for criminal behavior. See part II, *ante*. This is not some effort to craft legislation in order to wag the tail of the dog of avoiding the reasonable doubt requirement. See *McMillan* v. *Pennsylvania*, 477 U. S. 79, 88 (1986).

These limits are rendered even more appropriate by the minimal relevance of voluntary intoxication to negating *mens rea*.

> "Alcohol may loosen behavioral controls through a variety of biologically-induced psychological mechanisms, but intoxicated persons still know what they are doing and intend to do what they do. *They might not have committed the same acts if they had been sober, but they still intended to do what they did when intoxicated.* One who is sympathetic to intoxicated actors may wish to consider them less culpable in the partial responsibility sense because they have lessened controls, but intoxicated actors typically will not be less culpable because they lack *mens rea*." Morse, Undiminished Confusion in Diminished Capacity, 75 J. Crim. L. & Criminology 1, 45 (1984) (emphasis added); see also Mitchell, The Intoxicated Offender—Refuting the Legal Myths, 11 Int'l J. Law and Psych. 77, 90-91 (1988).

Legal commentators have also noted the rarity of intoxication negating *mens rea*. "Rather obviously, harms committed by inebriates reveal not wild, disorganized, aimless, motor activity but conduct well adapted to attain specific goals." Hall, Intoxication and Criminal Responsibility, 57 Harv. L. Rev. 1045, 1053-1054 (1944). When defendants succeed in negating specific intent through voluntary intoxication "it is commonplace that in most of these cases a criminal intent is present . . . ." *Id.*, at 1062. As one noted jurist understood, "[d]runkenness, while efficient to reduce or remove *inhibitions*, does not readily negate intent." *Heideman* v. *United States*, 259 F. 2d 943, 946 (D. C. Cir. 1958) (emphasis in original; footnote omitted) (Burger, J.).

The present case provides an excellent example that most claims that intoxication negates *mens rea* are specious. There was ample evidence that defendant had the appropriate *mens rea* in spite of his intoxication.

> "In order to commit the crimes, he had to take the gun from the glove compartment of the vehicle. He made an attempt to flee after he went into the ditch. He tried to avoid detection when Rebecca Garrison tried to approach the car. Ms. Garrison noticed a stick which she assumed must have been used by Egelhoff to depress the accelerator so that Egelhoff could drive from the back seat. He could talk. At the IGA store at 9:20 p.m., Egelhoff spoke well and did not slur his words. He later told Ms. Garrison to "stay away" and he talked to the ambulance driver. He had physical energy and strength. He tried to avoid detection by another of the witnesses who had stopped to give assistance. Detective Bernall testified that his coordination was good as was demonstrated by his kicking of the camera." *People* v. *Egelhoff*, 900 P. 2d 260, 265 (Mont. 1995).

The fact that defendant claimed he had no memory of his actions, see *id.*, at 262-263, is irrelevant to his *mens rea* when he committed his crimes.

> "It is perfectly commonplace that persons may be well aware of what they are doing at a given time but are unable to remember what happened afterwards, especially if the events were highly upsetting. A later memory problem may indicate that a person has problems with alcohol, but it does not necessarily mean that he lacked various mental abilities or did not form certain mental states at the time in question." Morse, *supra*, 75 J. Crim. L. & Criminology, at 47; see also Mitchell, *supra*, 11 Int'l J. Law and Psych., at 91-92.

Public misconceptions about the ability of intoxication to excuse criminal behavior, see Critchlow, The Powers of John Barleycorn, 41 American Psychologist 751, 753-754 (1986), can make juries give this minimally relevant evidence much more probative value than it deserves. It is no abuse for the government to prevent the admission of evidence when its probative value is outweighed by its prejudicial effect. See Fed. Rules Evid., Rule 403. The fact that this benefits the prosecution instead of the defense does not offend due process. "[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." *Snyder* v. *Massachusetts*, 291 U. S. 97, 122 (1934). Montana's attempt to make this world safe and its criminal trials fairer and more accurate is no abuse of its prerogative to deal with crime. See *Patterson*, *supra*, 432 U. S., at 201-202.

V. Limits on voluntary intoxication do not violate any legitimate right to present evidence.

Some state limits on defendant's evidence can be unconstitutional. Under *Rock* v. *Arkansas*, 483 U. S. 44 (1987) and *Chambers* v. *Mississippi*, 410 U. S. 284 (1973), defendants have a carefully circumscribed right to present evidence. This right is much narrower than the general right to present evidence relevant to reasonable doubt invented by the court below, and is not violated by limits on the use of voluntary intoxication.

Chambers was a very reasonable response to a very unreasonable situation. Chambers was convicted of shooting and killing a police officer, Aaron Liberty, during a melee between

a small mob and a group of police officers trying to effect an arrest. See 410 U. S., at 285-286. Another man, McDonald, subsequently confessed to Chambers' attorneys that he had killed Officer Liberty. *Id.*, at 287. Later, McDonald repudiated his confession. *Id.*, at 288.

Part of Chambers' defense was that McDonald had committed the killing, but he could not present any evidence that McDonald confessed on four separate occasions. See *id.*, at 289. Chambers could not cross-examine McDonald about his confession because Mississippi followed the common law rule that a party could not impeach his own witness.[7] *Id.*, at 295. Chambers was defeated in his attempt to bring in the testimony of three people to whom McDonald confessed on the grounds that they were hearsay. *Id.*, at 298.

While the Court found the illogical and heavily criticized voucher rule to violate defendant's confrontation rights, it did not reverse the conviction on the voucher rule alone. See *id.*, at 295-298. Mississippi's use of the hearsay rule, when combined with the confrontation violation, mandated reversal.

While Mississippi admitted hearsay statements made against pecuniary interest, it did not admit statements made against penal interest like McDonald's confessions. *Id.*, at 299. The *Chambers* Court did not categorically forbid state hearsay rules from excluding exculpatory third-party confessions. See *id.*, at 300. Instead, *Chambers* relied on the fact that "[t]he hearsay statements involved in this case were originally made and subsequently offered at trial under circumstances that provided considerable assurance of their reliability." *Id.*, at 300. The indicia of reliability were both numerous and strong. Three confessions were made. They were made spontaneously to close acquaintances soon after the shooting. They were decidedly against McDonald's self-interest, and, finally, McDonald was present for cross-examination. See *id.*, at 300-301. This unique combination violated Chambers' right to present evidence on his behalf.

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7. Chambers' motion to call McDonald and examine him as an adverse witness was denied by the trial court. See *id.*, at 291-292.

The strength of Chambers' fact-specific claim demonstrates that this right is very limited. "In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id.*, at 302. Exceptions to the hearsay rule admitting inherently trustworthy evidence were long accepted and defendant's evidence "was well within this rationale." *Ibid.* Furthermore, "[t]hat testimony also was *critical* to Chambers' defense." *Ibid.* (emphasis added). Therefore, "[i]n *these circumstances*, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied *mechanistically* to defeat the ends of justice." *Ibid.* (emphasis added).

Limits on voluntary intoxication are far removed from this narrow, idiosyncratic holding. There is no strongly reliable confession of a third party in the present case. Voluntary intoxication is at best marginally relevant to reasonable doubt as it rarely, if ever, negates *mens rea* in a defendant who committed the necessary *actus reus*. See *ante*, at 25-26. More importantly, this is not the *mechanistic* application of a rule of evidence. Limits on voluntary intoxication as a defense embody a strong, well-designed social policy intended to reduce crime. See Part II, *ante*.

Chambers "establish[ed] no new principles of constitutional law." *Id.*, at 302. It did nothing to diminish "the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures." *Id.*, at 302-303. Instead, "we quite simply hold that under the *facts and circumstances of this case* the rulings of the trial court deprived Chambers of a fair trial." *Ibid.* (emphasis added). This cannot invalidate the important social policy and very different circumstances found in the present case to the common law.

Rock v. *Arkansas*, *supra*, is as readily distinguished. The *Rock* Court dealt with a "*per se* rule excluding a criminal defendant's hypnotically refreshed testimony." 483 U. S., at 49. Defendant's claim was based on her right to testify of her own behalf. The *Rock* Court drew this right from several constitutional provisions, see *id.*, at 51, and its own decisions, including

Chambers. See *id.*, at 55. It concluded that "restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve." *Id.*, at 55-56.

The present case is most easily distinguished from *Rock* because it does not involve defendant's testimony. Rock was convicted of manslaughter, see *id.*, at 48, a crime for which there will often be few witnesses. Preventing defendant from testifying will thus often devastate the defense. See *id.*, at 57. As noted above, voluntary intoxication is at most minimally relevant, see *ante*, at 24-26, and does not involve the testimony of the accused.

Rock applied a balance of interests test to limits on defendant's testimony. See *id.*, at 56. Applying interest-related balancing tests to state criminal rules and procedures is normally disfavored. See *Medina* v. *California*, 505 U. S. 437, 443 (1992). *Rock* should thus not be loosed upon all the rules of evidence, but instead limited to protecting defendant's own testimony.

Even if *Rock* exceeds these bounds, it still does not invalidate limits on voluntary intoxication. There is nothing "arbitrary" about limiting voluntary intoxication. It is part of a well-justified, important, social policy. As it at best minimally infringes upon the legitimate interests of defendant, the balance of interests are not unconstitutionally disproportionate.

Rock involved testimony that, while controversial, was at least subject to many safeguards. See 483 U. S., at 60-61. Voluntary intoxication, on the other hand, is likely to confuse the jury by reinforcing widespread, but inaccurate, beliefs regarding the ability of intoxication to negate *mens rea*. See *ante*, at 8-10. There are no safeguards here. Instead, negating defendant's *mens rea* through intoxication calls forth some of the worst examples of abusive expert testimony. See Mitchell, The Intoxicated Offender—Refuting the Legal and Medical Myths, 11 Int'l J. Law and Psych. 77, 100-103 (1988); Morse, Undiminished Confusion in Diminished Capacity, 75 J. Crim. L. & Criminology 1, 47-48 (1984). Whatever it is, *Rock* is no license for defendant to confuse the jury with inaccurate, irrelevant evidence.

CONCLUSION

The decision of the Montana Supreme Court should be reversed.

January, 1996

Respectfully submitted,

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